

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition :  
of  
Edward S. Roache, Jr. :

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article(s) 22 of the Tax Law :  
for the Year 1980.

---

State of New York :

ss.:

County of Albany :

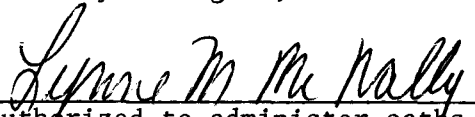
David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 21st day of August, 1987, he/she served the within notice of decision by certified mail upon Edward S. Roache, Jr. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

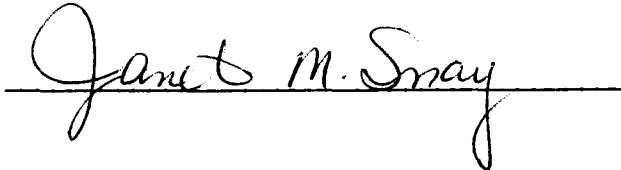
Edward S. Roache, Jr.  
4177 Rueda Drive  
San Diego, CA 92124

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this  
21st day of August, 1987.

  
\_\_\_\_\_  
Authorized to administer oaths  
pursuant to Tax Law section 174

  
\_\_\_\_\_

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition  
of

Edward S. Roache, Jr.

:

:

AFFIDAVIT OF MAILING

for Redetermination of a Deficiency or Revision :  
of a Determination or Refund of Personal Income :  
Tax under Article(s) 22 of the Tax Law :  
for the Year 1980.

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 21st day of August, 1987, he served the within notice of decision by certified mail upon Steve Golodny, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Steve Golodny  
Gasman & Gasman  
500 Fifth Avenue  
New York, NY 10036

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this  
21st day of August, 1987.

Janet M. Snay

Lynne M. McHally  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

August 21, 1987

Edward S. Roache, Jr.  
4177 Rueda Drive  
San Diego, CA 92124

Dear Mr. Roache:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Steve Golodny  
Gasman & Gasman  
500 Fifth Avenue  
New York, NY 10036

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
EDWARD S. ROACHE, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

---

Petitioner, Edward S. Roache, Jr., 4177 Rueda Drive, San Diego, California 92124, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 40720).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 22, 1986 at 2:45 P.M. Petitioner appeared by Steven Golodny of the firm of Gasman & Gasman, C.P.A.'s. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was taxable as a resident individual of New York State for the entire year 1980.

FINDINGS OF FACT

1. Petitioner, Edward S. Roache, Jr., filed a New York State Income Tax Resident Return for 1980, showing an address in San Juan, Puerto Rico. The return indicated that petitioner was a New York State resident for three months of the year. All Federal adjusted gross income was reported as taxable for New York State purposes. A wage and tax statement attached to the return reported wage and salary income of \$21,624.96 from the Nestle Company, Inc. of White

Plains, New York. It showed petitioner's address as 334 Sprain Road, Scarsdale, New York 10583. The amount shown on the statement represented petitioner's earnings from January 1, 1980 through March 31, 1980. The tax computed on the New York return was \$4,016.99.

2. The aforementioned return was prepared by an accountant in Puerto Rico. A letter from the accountant which was attached to the return requested that petitioner be allowed a credit for taxes paid to the Commonwealth of Puerto Rico.

3. Petitioner's Puerto Rico return for 1980 shows \$60,018.00 in salary income earned in Puerto Rico during 1980 and \$11,577.44 in tax liability. Petitioner's Federal form 1040 for 1980 claimed a credit of \$7,874.43 for foreign taxes paid of \$11,577.44.<sup>1</sup>

4. On December 4, 1981 the Audit Division issued a Statement of Audit Changes to petitioner stating, in part, as follows:

"You are considered a full-year New York State resident and you are subject to New York State tax on all income reported on your Federal tax return. No credit for taxes paid to Puerto Rico are [sic] allowed.

We computed your tax liability as follows:

Maximum Tax per return	\$4,016.99
Tax withheld	<u>1,558.98</u>
PERSONAL INCOME TAX DUE	\$2,458.01"

5. On June 4, 1982 the Audit Division issued a Notice of Deficiency to petitioner for \$2,458.01 in additional tax, plus interest.

---

1 The credit applies to taxes paid to United States possessions as well as foreign countries.

6. Petitioner admits that he was domiciled in New York prior to April 1, 1980.

7. Petitioner was employed by the Nestle Company, Inc. at White Plains, New York prior to the beginning of the year at issue and until March 31, 1980. Effective April 3, 1980 petitioner was transferred to Nestle - Libby (Puerto Rico), Inc., in San Juan, Puerto Rico.

8. Petitioner moved from New York to Puerto Rico on April 1, 1980.

9. Petitioner sold his home in Scarsdale, New York to Merrill Lynch Relocation Management, Inc. The vacating date was April 1, 1980 and the contract date was May 1, 1980. Payment was made to petitioner on May 27, 1980.

10. On June 30, 1980 petitioner purchased a condominium apartment in San Juan, Puerto Rico.

11. Petitioner spent two days in New York between April 1, 1980 and December 31, 1980.

12. In a letter to the Audit Division dated September 9, 1981, petitioner stated in part:

"1. I moved to Puerto Rico because my Company, the Nestle Company, transferred me here. The assignment is considered temporarily [sic]. It is expected to be for three to five years, however, this can be shorten [sic] or lengthen [sic] at any time.

2. I intend to move back to the U.S. It could possibly be New York State, but that is very uncertain. This depends on my subsequent work assignment with Nestle. They could assign me to another country or they could send me to some other state in the U.S."

13. On or about April 21, 1982 petitioner moved from Puerto Rico to San Diego, California, where he presently resides.

14. Petitioner concedes that he is not entitled to a credit against New York personal income tax for taxes paid to the Commonwealth of Puerto Rico.

CONCLUSIONS OF LAW

A. That petitioner remained a domiciliary of New York State and did not acquire a new domicile in Puerto Rico. The Regulations provide in pertinent part as follows:

"(d) Domicile. (1) Domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed." (20 NYCRR 102.2[d].)

Petitioner admits he was a New York domiciliary prior to April 1, 1980. Because he failed to prove a "bona fide intention of making his fixed and permanent home" in Puerto Rico, his New York domicile continued throughout the year in question. The only evidence of his intention was the purchase of a condominium apartment and the statements in his letter of September 9, 1981 (Finding of Fact "12"). According to petitioner's letter, his assignment in Puerto Rico was temporary, expected to be 3 to 5 years in duration. Insofar as petitioner did not intend to remain in Puerto Rico indefinitely, he did not establish a new domicile there.

B. That Tax Law § 605(a) provides, in pertinent part:

"(a) Resident individual. A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state...."

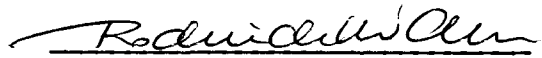
C. That petitioner was domiciled in New York State for the entire year 1980 and did not meet the requirements for exception set forth in Tax Law § 605(a)(1)(A). Accordingly, petitioner was a resident individual of New York State for said entire year and is subject to New York State tax on that basis.

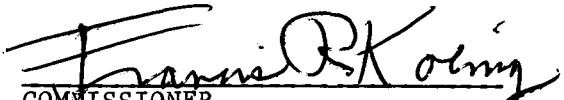
D. That the petition of Edward S. Roache, Jr. is denied and the Notice of Deficiency issued June 4, 1982 is sustained.


DATED: Albany, New York

STATE TAX COMMISSION

**AUG 21 1987**

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER



TA-26 (7/85)

STATE OF NEW YORK

Commission

LS BUREAU

Priman Campus

N.Y. 12227

Claim Check

No.

350187

☐ Hold

Date

1ST Notice

2ND Notice

Return

IN TO SENDER

Detached from  
FD-36 (Rev. 10-19-85)  
Oct. 1985

EXPIRED

CERTIFIED

P-602 466 502

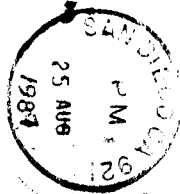
MAIL

DIV. OF TAX APPEALS

Edward S. Roache, Jr.  
4177 Rueda Drive  
San Diego, CA 92124

RECEIVED

SEP 24 1987



2408

A

A

STATE OF NEW YORK  
STATE TAX COMMISSION  
ALBANY, NEW YORK 12227

August 21, 1987

Edward S. Roache, Jr.  
4177 Rueda Drive  
San Diego, CA 92124

Dear Mr. Roache:

Please take notice of the decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 690 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance  
Audit Evaluation Bureau  
Assessment Review Unit  
Building #9, State Campus  
Albany, New York 12227  
Phone # (518) 453-4301

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:  
Steve Golodny  
Gasman & Gasman  
500 Fifth Avenue  
New York, NY 10036

STATE OF NEW YORK

STATE TAX COMMISSION

---

In the Matter of the Petition	:	
of	:	
EDWARD S. ROACHE, JR.	:	DECISION
for Redetermination of a Deficiency or for	:	
Refund of Personal Income Tax under Article 22	:	
of the Tax Law for the Year 1980.	:	

---

Petitioner, Edward S. Roache, Jr., 4177 Rueda Drive, San Diego, California 92124, filed a petition for redetermination of a deficiency or for refund of personal income tax under Article 22 of the Tax Law for the year 1980 (File No. 40720).

A hearing was held before Robert F. Mulligan, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York on October 22, 1986 at 2:45 P.M. Petitioner appeared by Steven Golodny of the firm of Gasman & Gasman, C.P.A.'s. The Audit Division appeared by John P. Dugan, Esq. (Angelo A. Scopellito, Esq., of counsel).

ISSUE

Whether petitioner was taxable as a resident individual of New York State for the entire year 1980.

FINDINGS OF FACT

1. Petitioner, Edward S. Roache, Jr., filed a New York State Income Tax Resident Return for 1980, showing an address in San Juan, Puerto Rico. The return indicated that petitioner was a New York State resident for three months of the year. All Federal adjusted gross income was reported as taxable for New York State purposes. A wage and tax statement attached to the return reported wage and salary income of \$21,624.96 from the Nestle Company, Inc. of White

Plains, New York. It showed petitioner's address as 334 Sprain Road, Scarsdale, New York 10583. The amount shown on the statement represented petitioner's earnings from January 1, 1980 through March 31, 1980. The tax computed on the New York return was \$4,016.99.

2. The aforementioned return was prepared by an accountant in Puerto Rico. A letter from the accountant which was attached to the return requested that petitioner be allowed a credit for taxes paid to the Commonwealth of Puerto Rico.

3. Petitioner's Puerto Rico return for 1980 shows \$60,018.00 in salary income earned in Puerto Rico during 1980 and \$11,577.44 in tax liability. Petitioner's Federal form 1040 for 1980 claimed a credit of \$7,874.43 for foreign taxes paid of \$11,577.44.<sup>1</sup>

4. On December 4, 1981 the Audit Division issued a Statement of Audit Changes to petitioner stating, in part, as follows:

"You are considered a full-year New York State resident and you are subject to New York State tax on all income reported on your Federal tax return. No credit for taxes paid to Puerto Rico are [sic] allowed.

We computed your tax liability as follows:

Maximum Tax per return	\$4,016.99
Tax withheld	1,558.98
PERSONAL INCOME TAX DUE	\$2,458.01"

5. On June 4, 1982 the Audit Division issued a Notice of Deficiency to petitioner for \$2,458.01 in additional tax, plus interest.

---

1 The credit applies to taxes paid to United States possessions as well as foreign countries.

6. Petitioner admits that he was domiciled in New York prior to April 1, 1980.

7. Petitioner was employed by the Nestle Company, Inc. at White Plains, New York prior to the beginning of the year at issue and until March 31, 1980. Effective April 3, 1980 petitioner was transferred to Nestle - Libby (Puerto Rico), Inc., in San Juan, Puerto Rico.

8. Petitioner moved from New York to Puerto Rico on April 1, 1980.

9. Petitioner sold his home in Scarsdale, New York to Merrill Lynch Relocation Management, Inc. The vacating date was April 1, 1980 and the contract date was May 1, 1980. Payment was made to petitioner on May 27, 1980.

10. On June 30, 1980 petitioner purchased a condominium apartment in San Juan, Puerto Rico.

11. Petitioner spent two days in New York between April 1, 1980 and December 31, 1980.

12. In a letter to the Audit Division dated September 9, 1981, petitioner stated in part:

"1. I moved to Puerto Rico because my Company, the Nestle Company, transferred me here. The assignment is considered temporarily [sic]. It is expected to be for three to five years, however, this can be shorten [sic] or lengthen [sic] at any time.

2. I intend to move back to the U.S. It could possibly be New York State, but that is very uncertain. This depends on my subsequent work assignment with Nestle. They could assign me to another country or they could send me to some other state in the U.S."

13. On or about April 21, 1982 petitioner moved from Puerto Rico to San Diego, California, where he presently resides.

14. Petitioner concedes that he is not entitled to a credit against New York personal income tax for taxes paid to the Commonwealth of Puerto Rico.

CONCLUSIONS OF LAW

A. That petitioner remained a domiciliary of New York State and did not acquire a new domicile in Puerto Rico. The Regulations provide in pertinent part as follows:

"(d) Domicile. (1) Domicile, in general, is the place which an individual intends to be his permanent home - the place to which he intends to return whenever he may be absent.

(2) A domicile once established continues until the person in question moves to a new location with the bona fide intention of making his fixed and permanent home there. No change of domicile results from a removal to a new location if the intention is to remain there only for a limited time; this rule applies even though the individual may have sold or disposed of his former home. The burden is upon any person asserting a change of domicile to show that the necessary intention existed." (20 NYCRR 102.2[d].)

Petitioner admits he was a New York domiciliary prior to April 1, 1980. Because he failed to prove a "bona fide intention of making his fixed and permanent home" in Puerto Rico, his New York domicile continued throughout the year in question. The only evidence of his intention was the purchase of a condominium apartment and the statements in his letter of September 9, 1981 (Finding of Fact "12"). According to petitioner's letter, his assignment in Puerto Rico was temporary, expected to be 3 to 5 years in duration. Insofar as petitioner did not intend to remain in Puerto Rico indefinitely, he did not establish a new domicile there.

B. That Tax Law § 605(a) provides, in pertinent part:

"(a) Resident individual. A resident individual means an individual:

(1) who is domiciled in this state, unless (A) he maintains no permanent place of abode in this state, maintains a permanent place of abode elsewhere, and spends in the aggregate not more than thirty days of the taxable year in this state...."


C. That petitioner was domiciled in New York State for the entire year 1980 and did not meet the requirements for exception set forth in Tax Law § 605(a)(1)(A). Accordingly, petitioner was a resident individual of New York State for said entire year and is subject to New York State tax on that basis.

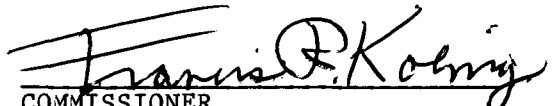
D. That the petition of Edward S. Roache, Jr. is denied and the Notice of Deficiency issued June 4, 1982 is sustained.

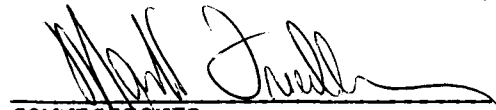
DATED: Albany, New York

STATE TAX COMMISSION

AUG 21 1987

  
PRESIDENT

  
COMMISSIONER

  
COMMISSIONER